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Ind. 410; *Beloit Second National Bank* v. *Merrill,* 81 Wis. 151. In other states it is held as in the principal case that the statute will run from the time the right of action accrues. *Sabel* v. *Slingsluff,* 52 Md. 132; *Muus* v. *Muus,* 29 Minn. 115.

INSURANCE—MUTUAL BENEFIT SOCIETIES—BENEFICIARIES.—A by-law of a mutual benefit association limited the beneficiaries to relations and dependants of the insured, though the statute under which the society was organized allowed others to be insured as beneficiaries. A became a member and took out a benefit certificate in favor of B, "or such person or persons as the rules and regulations of said association shall determine." B was neither a relation nor a dependant of A, this fact being well known to the company. On the death of A, his only surviving brother and sisters brought suit, as his nearest relatives, to recover the amount of the benefit certificate. B likewise sued for the amount, and, the association having paid the money into court, the claimants interpleaded. *Held,* (two of the judges dissenting) that B was entitled to recover. *Coulson et al.* v. *Flynn et al.* (1905), — N. Y. —, 73 N. E. Rep. 507.

Though in this case the statute was broader than the by-laws as to classes of beneficiaries allowed, still as the by-laws as well as the statute must be read into the contract and the primary object of these associations taken into consideration, it would seem that the dissenting opinion is better supported by reason and authority than that of the majority. The holding in the present case seems to be in accord with those cases that hold that where the beneficiary named is outside the class provided for by the constitution of the association, no one but the association can raise the question, and it may waive its right. *Morrison* v. *Mutual Life Insurance Co.,* 59 Wis. 162; *Davidson* v. *Mutual Benefit Society,* 39 Minn. 303; *Johnson* v. *Knights of Honor,* 53 Ark. 255; *Knights of Honor* v. *Wattson,* 64 N. H. 517; *Luhrs* v. *Supreme Lodge etc.,* 7 N. Y. Supp. 487. In the last case cited, however, the beneficiary, while not the legal wife of the assured yet supposed she was, and had lived with him as such up to the time of his death. But the better opinion seems to be that where the person designated as beneficiary is not within any of the statutory classes, no waiver by the company will be effective, and the fund will go to the person or persons of the class first entitled. *American Legion of Honor* v. *Perry,* 140 Mass. 580; *Shea* v. *Mutual Benefit Association,* 160 Mass. 289; *Palmer* v. *Welch,* 132 Ill. 141; *Alexander* v. *Parker,* 144 Ill. 355; *Britton* v. *Royal Arcanum,* 46 N. J. Eq. 102; *Mutual Benefit Association* v. *Rolfe,* 76 Mich. 146; *Di Messiah* v. *Gern,* 10 Misc. Rep. (N. Y.) 30. See also, *Ledebuhr* v. *Wis. Trust Co.,* 112 Wis. 657; MAY ON INSURANCE, Vol. II, 399 F; AM. & ENG. ENC. OF LAW, III, pp. 959-61, 1083, 19 Am. St. Rep., note p. 786; BACON BEN. SOC. I, § 244.

LIFE INSURANCE—DISTRIBUTION OF SURPLUS—CONSTRUCTION OF STATUTE.—The statutes of Wisconsin provided that "every life insurance company doing business in this state on the principle of mutual insurance, or the members of which are entitled to share in the surplus funds thereof may make distribution of such surplus as they have cumulated annually or once in two, three,

four or five years, as the directors thereof may from time to time determine. In determining the amount of the surplus to be distributed there shall be reserved an amount not less than the aggregate net value of all the outstanding policies." In an action brought to enjoin the Commissioner of Insurance from cancelling plaintiff's license in the state it was *Held,* that the law was not violated by the issuance of policies providing for the distribution of dividends at periods of ten, fifteen and twenty years, and the relief asked for was granted. *Equitable Life Insurance Society of the United States* v. *Host* (1905), — Wis. —, 102 N. W. Rep. 579.

The holding turned on the question whether the word "may" in the statute should be regarded as mandatory or merely permissive. The ground taken by the court is that the purpose of the law was the protection of policy holders by safeguarding against insolvency by providing for the cumulation of a surplus. The defendant, on the other hand, insisted that the statute was mandatory and that under it plaintiff had no right to defer payment of the dividends for a longer period than five years. In a recent case in Illinois (cited in the opinion) where the statute was practically indentical with that of Wisconsin the same conclusion was reached by the court as in the principal case. *Rothschild* v. *New York Life Insurance Co.,* 97 Ill. App. 547; and a similar holding in New York is that in the case of *Greef* v. *Equitable Life Assurance Society,* 160 N. Y. 19, 46 L. R. A. 288. While it is well settled that the word "may" will be construed to mean "shall" whenever the public or third persons have a claim that the power ought to be exercised, yet the rule of interpretation is not uniform but depends upon what in view of the circumstances appears to have been the true intent of the statute. SEDGWICK ON STATUTORY CONSTRUCTION, p. 375; *Supervisors* v. *United States,* 4 Wall. 446; *Malcolm* v. *Rogers,* 5 Cow. (N. Y.) 188, 15 Am. Dec. 464, note; *State of Maryland* v. *Knowles,* 90 Md. 646, 49 L. R. A. 695; *The King* v. *Barlow,* 2 Selk. 609; LEWIS' SUTHERLAND ON STATUTORY CONSTRUCTION, (2nd edition) Vol. II, § 640. Notwithstanding the Illinois and New York decisions mentioned it seems that the words of the statute might well be construed as mandatory, else why is five years the longest term mentioned? It is said in one or more of the cases that the provision allowing annual dividends may be regarded as a limitation for the protection of policy holders against declaring them at shorter intervals. Why should not the same manner of construction apply to the longest period mentioned, regarding it, too, as a limitation beyond which dividends shall not be deferred?.

MARRIAGE—SECOND MARRIAGE WHILE IMPEDIMENT OF FORMER MARRIAGE EXISTS—EFFECT OF REMOVAL OF IMPEDIMENT.—Complainant believed her husband by a former marriage was dead, but in order to remove any impediment to her second marriage with defendant she instituted proceedings for divorce from her former husband at the suggestion of defendant. While these proceedings were pending and before a decree of divorce was rendered complainant and defendant were married. After the decree of divorce was rendered defendant assured complainant that she was his lawful wife and that another ceremony was unnecessary. Complainant relied upon this assurance and lived with defendant as his wife for twenty-three years. Defendant then